

**STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON REGULATORY AFFAIRS
OF THE
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES**

April 12, 2005

Madam Chairman, and Members of this Committee, I am John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget. Thank you for inviting me to this hearing and for giving me the opportunity to testify today on the reform of regulations that impact the United States manufacturing sector.

Modernizing and streamlining the sea of existing federal regulations is an immense and humbling challenge. Since OMB began to keep records in 1981, there have been 115,966 final rules published in the Federal Register by federal agencies. Of these published rules, 19,538 were formally reviewed by OMB prior to publication. Of the OMB-reviewed rules, 1,068 were considered "major" or "economically significant" rules, primarily because they were estimated to have an economic impact greater than \$100 million in any one year.

Sad as it is to say, most of these existing federal rules have never been evaluated to determine whether they have worked as intended and what their actual benefits and costs have been. During President Bush's first term, OMB initiated a program to take a second look at a limited number of these existing regulations, guidance documents, and paperwork requirements, as we are authorized to do under what's known as the Regulatory Right to Know Act.¹ Our February, 2004 request for reform nominations, with a clear focus on the manufacturing sector of the U.S. economy, was the third such solicitation of reforms undertaken by this Administration.

To briefly summarize the previous reform initiatives, in 2001 OMB requested public nominations of rules that should be rescinded or modified. We received 71 nominations from 33 commenters, and OMB determined that 23 of the nominations should be treated as "high priority" review candidates. Federal agencies have taken at least some action (e.g., a proposed or final rule) on nearly 75% of these reform nominations. Overall, OMB regards the 2001 solicitation as a successful endeavor. In 2002, OMB again requested public nominations of reforms. In an important innovation, we included guidance documents and paperwork requirements, as well as rules, within the scope of the solicitation. We received 316 distinct reform nominations from more than 1,700 commenters. OMB and the agencies determined that 156 of the nominations should be referred to agencies for their consideration. In 2002, OMB did not attempt to define "high priority" reforms for two reasons: the large volume of nominations exceeded the capabilities of OIRA staff to evaluate them; and we felt the agencies might take

¹ Section 624 of the Treasury and General Government Appropriations Act of 2001 (31 U.S.C. § 1105 note, Pub. L. 106-554)

greater ownership of reforms if they decided which were to be treated as a priority. We have determined, however, that only about 1/3 of the 2002 nominations referred to the agencies have resulted in agency action. Appendix D of our 2004 final Report to Congress on the Costs and Benefits of Federal Regulation² contains an item-by-item update on the status of each of the 2001 and 2002 nominations as of December, 2004.

We decided to focus our 2004 regulatory reform initiative on the manufacturing sector, which is one of the most heavily regulated sectors of our economy. In the 2004 Economic Report of the President, the Council of Economic Advisors found that the recent economic downturn hit the manufacturing sector hard, starting earlier and lasting longer in that sector of the economy. The Department of Commerce, in their 2004 report *Manufacturing in America*, recommended regulatory reform as a key activity government can undertake to ensure the continued competitiveness of U.S. manufacturing. Since U.S. manufacturers compete with firms from both developed and developing countries in an increasingly global economy, the Administration believes it is critical that any unnecessary regulatory burdens be removed.

We also applied the lessons learned from the 2001 and 2002 processes to our latest round of reform requests. First, we offered additional guidance to commenters on how to suggest reforms. We asked that commenters try and make a benefit-cost case for the reform, as many of the rules that are potential reform candidates undoubtedly generate substantial benefits. We also recommended that commenters focus on reforms that agencies can move forward on without statutory change. Our experience with previous years taught us that these are the types of reform suggestions that are likely to lead to agency actions.

In December 2004, OMB released for agency review the 189 reform nominations that were submitted by 41 industry and non-profit groups in response to our request. OMB instructed federal agencies to review the merits of each of the reform nominations and prepare a response for OMB. The responses included a determination as to whether reform action is appropriate, and if appropriate a time-line for action and a plan for public participation. OMB evaluated the reform nominations and collaborated with federal agencies in the development of response plans. OMB also sought evaluations of the recommendations by the Advocacy Office of the Small Business Administration and the Department of Commerce's Office of the Assistant Secretary for Manufacturing and Services.

Of the 189 nominations, 76 were selected by the agencies and OMB for priority consideration and action by the Bush Administration. OMB's report on Regulatory Reform of the U.S. Manufacturing Sector³ summarizes each of the 76 reform nominations and the time-specified steps Federal agencies will take to address them. The majority of the 76 reform nominations address programs administered by the Environmental Protection Agency and the Department of Labor, a pattern that reflects the large impact of environmental and labor regulation on this sector of the economy. Recommended actions range from gathering and reporting additional information to issuing modernized regulations.

² Available on our website at http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html

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Many of the regulations recommended for reform may be instances where the rule regulates to what Justice Stephen Breyer in his book *Breaking the Vicious Circle* has called “the last 10 percent,” where a regulatory bar is set so high that it imposes unnecessarily large costs for little to no additional benefit.⁴ For example, a nomination for reform at EPA (number 117) recommends modifications to the Industrial Pretreatment Program rules regarding wastewater sampling. Currently, industrial facilities discharging to sewage treatment plants must regularly sample their wastewater for all nationally regulated pollutants listed for their industry, even if they do not use the substance and have no possibility of discharging it. The commenter, the Copper and Brass Fabricators Council, suggested allowing this requirement to be waived if a facility can demonstrate that it does not use the pollutant, and thus the pollutant would not be present in its wastewater. EPA proposed similar modifications in 1999 but never finalized the rule. In response to the final report, EPA has agreed to publish the final rule in an expedited manner in June of 2005.

In closing, OMB is dedicated to this initiative; we will oversee the reform process to make sure that agencies make adequate progress in the months and years ahead. Thank you very much for the opportunity to participate today in this very important hearing.

⁴ *Breaking the Vicious Circle: The Oliver Wendell Holmes Lectures, 1992*. Harvard University Press